

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:)	
)	
MANCHESTER RESORTS)	AMENDED COMPLAINT
HYATT HOTEL EXPANSION)	NO. R9-2002-0111
SAN DIEGO, CALIFORNIA)	FOR
)	ADMINISTRATIVE CIVIL LIABILITY
NONCOMPLIANCE WITH ORDER NO.)	
R9-2000-0090, NPDES NO. CAG919001,)	APRIL 17, 2002
GENERAL DEWATERING PERMIT,)	
DISCHARGES TO SAN DIEGO BAY)	

MANCHESTER RESORTS, IS HEREBY GIVEN NOTICE THAT:

1. Manchester Resorts is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, California Water Code (CWC), section 13385 et seq.
2. A public hearing on this matter is scheduled before the Regional Board on May 8, 2002, at the San Diego Regional Water Quality Control Board office, 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 am. At the hearing, Manchester Resorts will have the opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. Additional notice of this public hearing and the hearing procedures will be provided to Manchester Resorts prior to the hearing date with the agenda for the Regional Board meeting.
3. At the hearing, comments from Manchester Resorts and interested parties will be considered by the Regional Board in determining the amount of civil liability to assess. At the hearing, the Regional Board will determine the validity of the allegations contained herein and, if the allegations are found to be true, will consider whether to assess civil liability in the amount proposed by this Amended Complaint, or in some other amount, or revoke the Amended Complaint and refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

4. During the period from August 2001 through February 2002, Manchester Resorts violated Order No. R9-2000-0090, NPDES NO. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto.

Effluent limit exceedances of total suspended solids, settleable solids, and copper were noted in the Discharger Self-Monitoring Reports.

5. Manchester Resorts is permitted to discharge groundwater extraction waste to San Diego Bay from the Hyatt Hotel expansion construction project under the provisions of Order No. R9-2000-0090. The temporary construction dewatering discharge enters the City of San Diego's storm water conveyance system at Kettner Boulevard just south of North Harbor Drive. The discharge ultimately enters San Diego Bay just west of the terminus of Kettner Boulevard via the storm water conveyance system. The Order is a general permit and was adopted on June 14, 2000. Manchester Resorts was issued waste discharge requirements pursuant to the Order on July 13, 2001 for the Hyatt Hotel Expansion project. Table 1 (attached) summarizes the discharge limitations set forth in Order No. R9-2000-0090 and the violations by Manchester Resorts during the period in question according to Manchester Resorts' submitted monitoring reports.
6. Under California Water Code section 13385(c), the maximum administrative civil liability which could be imposed by the Regional Board for the violations described in the Findings of this complaint is ten thousand dollars (\$10,000) for each day in which a violation occurs. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds \$1,000 gallons. The maximum Administrative Civil Liability (ACL) which could be imposed by the Regional Board is \$12,694,000.

$$\begin{aligned}\text{Violation Liability} &= 7 \text{ Days of Violation} \times \$10,000/\text{Day} = \$70,000 \\ \text{Discharge Liability} &= (1,269,400 \text{ gallons} - 7,000 \text{ gallons}) \times \$10/\text{gallon} = \$12,624,000\end{aligned}$$

$$\text{MAXIMUM ACL} = \$70,000 + \$12,624,000 = \$12,694,000$$

7. These exceedances are also violations of California Water Code section 13385(i) and are therefore subject to mandatory minimum penalties. Under California Water Code section 13385(h) and (i), the amount of the mandatory minimum penalty that must be assessed is \$21,000, determined by the following statutes:
 - a. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period (180 days), or, in lieu of the penalty, require the discharger to spend an equal amount for a supplemental environmental project, or to develop a pollution prevention plan.
 - b. Water Code Section 13385(i)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first violation, if the discharger commits two or more serious violations in any six-month period (180 days).

- c. Water Code section 13385(i)(2) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six-month period (180 days):
- Exceeds a waste discharge requirement effluent limitation.
 - Fails to file a report pursuant to Water Code section 13260.
 - Files an incomplete report pursuant to Water Code section 13260.
 - Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Table 1 provides a visual explanation of these penalties, including references to the applicable section of the California Water Code for each violation.

PROPOSED CIVIL LIABILITY

8. Based on consideration of the factors listed in section 13385 of the California Water Code, civil liability should be imposed on Manchester Resorts by the Regional Board in the amount of \$21,000, the amount of the mandatory minimum penalty, for the above violations.

Dated this 17th day of April 2002



JOHN H. ROBERTUS
Executive Officer

Table 1.
Violation Summary for Manchester Resorts (August 2001 through February 2002)

Date	Gallons Discharged	Violation	Permit Limit	Report Value	Pollutant Category	Ratio Report to Permit	Chronic or Serious?	Water Code section 13385	Penalty
01 Aug 2001	193,900	Total Suspended Solids (TSS) instantaneous maximum	50 mg/L	176 mg/L	1	3.5	Serious	(h)(1)	\$3,000
14 Aug 2001	246,300	Total Suspended Solids (TSS) instantaneous maximum	50 mg/L	114 mg/L	1	2.3	Serious	(h)(1)	\$3,000
27 Aug 2001	104,100	Total Suspended Solids (TSS) instantaneous maximum	50 mg/L	116 mg/L	1	2.3	Serious	(h)(1)	\$3,000
31 Aug 2001	146,600	Total Suspended Solids (TSS) 30-day average	30 mg/L	135 mg/L	1	4.5	Serious	(h)(1)	\$3,000
04 Sep 2001	225,500	Total Suspended Solids (TSS) instantaneous maximum	50 mg/L	102 mg/L	1	2.0	Serious	(h)(1)	\$3,000
30 Oct 2001	289,900	Settleable Solids	3 ml/L	9.4 ml/L	1	3.1	Serious	(h)(1)	\$3,000
02 Feb 2002	63,100	Copper, instantaneous maximum	4.8 ug/L	9.27 ug/L 8.58 ug/L	2	1.9 1.8	Serious	(h)(1)	\$3,000

Total Gallons **1,269,400**

Total Penalty \$21,000

Weekly Monitoring Results

August 2001
Analytical Chemistry
Discharge Water
Samples were collected
August 1, 7, 14, 21 & 27

CONSTITUENT	RESULTS	UNITS
Settleable Solids	<0.2	mg/l
Total Suspended Solids	176/1 st , 114/14 th , 116/27 th	mg/l
TPH	ND	µg/l
MTBE	<1	µg/l
Benzene	<0.5	µg/l
Toluene	<0.5	µg/l
Ethyl benzene	<0.5	µg/l
Xylenes	<1.0	µg/l
Turbidity	0, 0, 1, 1 & 1	NTU
pH	7.6, 7.34, 7.89, 7.73, & 7.37	

Receiving Water Turbidity (NTU)

Date	East	West
8/1	0	0
8/7	4	0
8/14	1	1
8/21	2*	2
8/27	1	1

*swells/waves from boats & wind

Weekly Monitoring Results

September 2001
Analytical Chemistry
Discharge Water
Samples were collected
September 4, 12, 18, 24 2001

Group I
(40%)

CONSTITUENT	RESULTS	UNITS
Settleable Solids	<0.2	ml/l
Total Suspended Solids	102(9/4) <20(9/12) <20(9/18) <20(9/21) <20(9/24)	mg/l
TPH	<20	µg/l
MTBE	<1.0	µg/l
Benzene	<0.5	µg/l
Toluene	<0.5	µg/l
Ethylbenzene	<0.5	µg/l
Xylenes	<1.0	µg/l
Turbidity	2(9/4) 4(9/12), 1(9/18) 0.16(9/24)	NTU
pH	7.53(9/4), 7.63(9/12), 7.92(9/18) 8.14(9/24)	

Inst. max = 50 mg/L
40% over = 70 mg/L

Weekly Monitoring Results

October 2001

Analytical Chemistry

Discharge Water

Samples were collected

October 2, 9, 17, 22, & 30, 2001

CONSTITUENT	RESULTS	UNITS
Settleable Solids	<0.2 (10/30) 9.4	ml/l
Total Suspended Solids	<20	mg/l
TPH	<20	µg/l
MTBE	<1.0	µg/l
Benzene	<0.5	µg/l
Toluene	<0.5	µg/l
Ethylbenzene	<0.5	µg/l
Xylenes	<1.0	µg/l
Turbidity	(10/2) 0.13 (10/9) 0.22 (10/17) 0.07 (10/22) 0.22 (10/30) 0.20	NTU
pH	(10/2) 7.30 (10/9) 8.12 (10/17) 8.16 (10/22) 7.87 (10/30) 7.58	

Group I / 40%
limit = 3 ml/l
1 ml/l
Int. max 4.1
30-day avg

MANCHESTER RESORTS

HYATT EXPANSION

Monthly Monitoring Results

February 2002

Samples collected February 12th

CONSTITUENT	RESULTS	UNITS
TPH	<20	µg/l
TPH (Baker Tank)	<20	µg/l
MTBE	<1.0	µg/l
Benzene	<0.5	µg/l
Toluene	<0.5	µg/l
Ethylbenzene	<0.5	µg/l
Xylenes	<1.0	µg/l
Tributyltin	<0.005	µg/l
Copper	9.27(replicate 1) 8.58(replicate 2)	µg/l
Lead	2.27(replicate 1) 2.31(replicate 2)	µg/l
Zinc	14.9(replicate 1) 15.2(replicate 2)	µg/l
Hydrogen Sulfide	<0.05	mg/l
Chronic Toxicity— Echinoderms	<1.0	TUc